

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JEROME WASHINGTON, ) Case No.: CV 13-7192-PJW  
Plaintiff, )  
v. ) MEMORANDUM OPINION AND ORDER  
CAROLYN W. COLVIN, Acting )  
Commissioner of Social )  
Security, )  
Defendant. )

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I. INTRODUCTION

Plaintiff appeals a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI"). He claims that the Administrative Law Judge ("ALJ") erred in finding that Plaintiff was not credible. For the reasons explained below, the Agency's decision is affirmed.

II. SUMMARY OF PROCEEDINGS

In April 2011, Plaintiff applied for SSI, alleging that he had been disabled since birth due to "mental issues," including schizophrenia. (Administrative Record ("AR") 35-36, 125-34,

1 147.) The Agency denied his application initially and on  
2 reconsideration. Plaintiff then requested and was granted a  
3 hearing before an ALJ. (AR 83-91.) In June 2012, he appeared  
4 with counsel and testified at the hearing. (AR 32-51.) The ALJ  
5 subsequently issued a decision denying benefits. (AR 13-20.)  
6 Plaintiff appealed to the Appeals Council, which denied review.  
7 (AR 1-3, 9.) He then commenced this action.

### 8 III. ANALYSIS

9 The essence of Plaintiff's testimony was that he suffered  
10 from schizophrenia and that it prevented him from working. (AR  
11 36-45.) The ALJ agreed that the evidence supported his claim  
12 that he suffered from a schizophrenia but determined that it did  
13 not prevent him from working. (AR 17.) In doing so, the ALJ  
14 concluded that Plaintiff's testimony that he could not work was  
15 not credible. Plaintiff claims that the ALJ erred in doing so.  
16 For the following reasons, the Court disagrees.

17 ALJs are responsible for judging the credibility of  
18 witnesses, including the claimants. In making these  
19 determinations, they can rely on ordinary credibility evaluation  
20 techniques. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir.  
21 1996). Where a claimant has produced medical evidence of an  
22 impairment which could reasonably be expected to produce the  
23 symptoms alleged and there is no evidence of malingering, an ALJ  
24 can only reject the claimant's testimony for specific, clear,  
25 and convincing reasons, *id.* at 1283-84, that are supported by  
26 substantial evidence in the record. *Thomas v. Barnhart*, 278  
27 F.3d 947, 959 (9th Cir. 2002).

1       The ALJ gave several reasons for questioning Plaintiff's  
2 credibility. First, he noted that the record did not establish  
3 that Plaintiff's symptoms prevented him from working. (AR 17.)  
4 The ALJ pointed out, for example, that the notes from  
5 Plaintiff's treating psychiatrist while he was in prison  
6 demonstrated that his condition was stable while on Geodon. (AR  
7 17.) This is a valid reason for questioning Plaintiff's claims  
8 of disabling symptoms, *see, e.g., Warre v. Comm'r of Soc. Sec.*  
9 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) ("Impairments that  
10 can be controlled effectively with medication are not disabling  
11 for the purpose of determining eligibility for SSI benefits."),  
12 and is supported by the record. Plaintiff submitted nine chart  
13 notes from the prison psychiatrist for the period April 2011 to  
14 April 2012. (AR 276-85.) These chart notes record that,  
15 generally speaking, Plaintiff was doing well on Geodon and that  
16 it helped him control his symptoms. (AR 276-85.) For example,  
17 on April 21, 2011, Plaintiff saw the prison psychiatrist for the  
18 first time and reported that he had no problems or complaints,  
19 other than hearing voices, which the doctor found were  
20 "contained" with Geodon. (AR 285.) There are eight more  
21 entries in the records documenting the doctor's contacts with  
22 Plaintiff during the course of the following year. The chart  
23 notes from five of those visits reflect that Plaintiff was  
24 stable (May 2, 2011, May 23, 2011, October 4, 2011, January 12,  
25 2012, and April 11, 2012). (AR 277-79, 282, 284.) Two of the  
26 notes, from June 29 and September 27, 2011, do not describe his  
27 condition at all. (AR 280-81.) And one note, from May 19,  
28 2011, describes him as "highly anxious," though it is not clear

1 whether the doctor even saw him that day as the note indicates  
2 that the "contact" was other than a face to face. (AR 283.)  
3 Notes from the prison psychologists and social workers who  
4 treated Plaintiff during this same period also reflect that, in  
5 general, they found him to be stable, too. (AR 232-44.)  
6 Furthermore, on May 26, 2011, examining psychiatrist Suzanne  
7 Ashman found that Plaintiff would be no more than mildly  
8 impaired in his ability to function in the workplace. (AR 256.)

9 Plaintiff disagrees with the ALJ's characterization of the  
10 medical evidence. He points out that, in addition to finding  
11 Plaintiff highly anxious in June 2011, the prison psychiatrist  
12 also found that he was unable to work because he was hearing  
13 voices when he was under stress, was confused about his  
14 medications, and felt sleepy on Geodon. (Joint Stip. at 5.)  
15 Though the records include these entries (AR 277, 279, and 284),  
16 they do not undermine the ALJ's characterization of the  
17 psychiatrist's assessments. These same records document that  
18 the psychiatrist believed that Plaintiff was stable on his meds.  
19 In fact, on the day that he found that Plaintiff was confused  
20 about his medications and was still hearing "some" voices, he  
21 noted that Plaintiff was stable. (AR 279.) As to the prison  
22 psychiatrist's opinion that Plaintiff was not able to work, the  
23 ALJ was not required to accept it as it was an issue reserved to  
24 the ALJ. *Martinez v. Astrue*, 261 Fed. App'x 33, 35 (9th Cir.  
25 2007) ("[T]he opinion that Martinez is unable to work is not a  
26 medical opinion, but is an opinion about an issue reserved to  
27 the Commissioner. It is therefore not accorded the weight of a  
28 medical opinion."). Thus, the ALJ's finding that Plaintiff's

1 claims of disabling impairment were undermined by the medical  
2 records from the prison is supported by the record and  
3 constitutes a valid reason for questioning his testimony.<sup>1</sup>

4 The ALJ also concluded that Plaintiff was exaggerating when  
5 he claimed that he could not work because he was able to perform  
6 a number of daily activities like bathing, dressing, preparing  
7 meals, and handling money. (AR 18.) Though the record supports  
8 the ALJ's finding that Plaintiff could perform these functions,  
9 the Court does not agree with the ALJ that Plaintiff's ability  
10 to perform them undermines his testimony that he could not work.  
11 They are simple, routine functions that obviously have little or  
12 no connection to holding down a job for 40 hours a week. See  
13 *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) ("This  
14 court has repeatedly asserted that the mere fact that a  
15 plaintiff has carried on certain daily activities, such as  
16 grocery shopping, driving a car, or limited walking for  
17 exercise, does not in any way detract from her credibility as to  
18 her overall disability."); and *Gonzalez v. Sullivan*, 914 F.2d  
19 1197, 1201 (9th Cir. 1990) (holding ALJ errs in failing to  
20 explain how ability to perform daily activities translated into  
21 ability to perform work).

22 <sup>1</sup> Plaintiff contends that the ALJ erred by not addressing  
23 his testimony that Geodon made him sleepy. (Joint Stip. at 3-  
24 4.) The record shows, however, that Plaintiff did not report  
25 any side effects from Geodon while he was in prison, nor did he  
26 mention any to the examining psychiatrist. (AR 232-44, 252-56.)  
27 As such, any failure by the ALJ to address the side effects was  
28 not erroneous. See, e.g., *Osenbrock v. Apfel*, 240 F.3d 1157,  
1163 (9th Cir. 2001) (holding ALJ did not err in failing to  
address "passing mentions" of side effects in medical records  
where there was no evidence that the side effects were severe  
enough to interfere with claimant's ability to work).

1       The third reason offered by the ALJ for questioning  
2 Plaintiff's testimony was that he was treated "conservatively"  
3 with psychotropic medications and was not hospitalized. (AR  
4 18.) This is a valid reason for questioning a claimant's  
5 testimony. See *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir.  
6 2007) ("[E]vidence of 'conservative treatment' is sufficient to  
7 discount a claimant's testimony regarding severity of an  
8 impairment.") And the record supports the ALJ's finding that  
9 Plaintiff's treatment was conservative. In fact, the Court  
10 would characterize it as non-existent, except when he was in  
11 prison. As Plaintiff explained to the examining psychiatrist,  
12 when he was 15, he was placed in a psychiatric hospital for one  
13 month. (AR 253.) He was 50 years old at the time of the  
14 administrative hearing. Yet, the only psychiatric treatment he  
15 received in that 35-year interval was when he was in prison.  
16 (AR 232-44, 272-85.) Even accepting his statement that he did  
17 not start hearing voices until 2005 (AR 252), he did not submit  
18 any records to show that he received treatment for the voices  
19 until 2010, when he was in prison. And there is no record of  
20 him receiving any treatment after he was released. Though the  
21 Court might quibble with the ALJ's finding that Plaintiff's  
22 treatment was conservative in the absence of any medical  
23 testimony that a more aggressive treatment was warranted, the  
24 Court agrees with the ALJ's sentiment that Plaintiff's testimony  
25 that he suffers from a debilitating psychiatric disorder is  
26 incongruent with the minimal treatment he received.

27       Finally, the ALJ noted that, though Plaintiff testified  
28 that he was not able to go out alone, he told the examining

1 psychiatrist that he could. (AR 18.) The ALJ was entitled to  
2 rely on the fact that Plaintiff contradicted his testimony.  
3 *Smolen*, 80 F.3d at 1284 (explaining ALJs are entitled to rely on  
4 ordinary credibility evaluation techniques, including a  
5 claimant's prior inconsistent statements concerning his  
6 symptoms, in evaluating his credibility).

7 In the end, the Court finds that three of the reasons cited  
8 by the ALJ for questioning Plaintiff's testimony are supported  
9 by the evidence and one is not. The issue that remains is  
10 whether these three reasons are enough to uphold the ALJ's  
11 credibility finding. See *Carmickle v. Comm'r, Soc. Sec. Admin.*,  
12 533 F.3d 1155, 1162 (9th Cir. 2008) (holding error by ALJ in  
13 credibility determination is harmless "[s]o long as there  
14 remains substantial evidence supporting the ALJ's conclusions on  
15 . . . credibility and the error does not negate the validity of  
16 the ALJ's ultimate credibility conclusion."). The Court finds  
17 that they are. It is clear from this record that Plaintiff's  
18 condition is controlled by his medication. Further, but for his  
19 time in custody, he did not receive any treatment for a  
20 condition that he claims is incapacitating. Finally, though he  
21 presents himself as someone who is incapable of leaving his  
22 house on his own, he told his doctor that he could. All this  
23 evidence suggests that Plaintiff's testimony that he was unable  
24 to work due to his condition was not true and the ALJ rightly  
25 questioned it concluding that Plaintiff was not disabled.<sup>2</sup>

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26 <sup>2</sup> Plaintiff complains that the ALJ failed to include all of  
27 his subjective complaints in the hypothetical question to the  
28 vocational expert. This argument is rejected. The ALJ was only  
required to include those limitations that he found believable,

IV. CONCLUSION

For these reasons, the ALJ's decision that Plaintiff is not disabled is affirmed and the action is dismissed with prejudice.

IT IS SO ORDERED.

DATED: October 30, 2014



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PATRICK J. WALSH  
UNITED STATES MAGISTRATE JUDGE

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which he did. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005).